



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND FIVE

AN ACT TO UPDATE AND IMPROVE CERTAIN TAX PROVISIONS OF THE COMMONWEALTH

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to make certain changes in the tax laws and other laws relating to the department of revenue, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 3A of chapter 14, of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the second sentence, and inserting in place thereof the following sentence:- No such agreement shall be entered into unless proposals for the same have been invited in accordance with regulations governing the procurement by state agencies of contracts of similar value.

SECTION 2. Section 6 of chapter 14 of the General Laws, as so appearing, is hereby amended by adding after subsection 6. the following subsection:-

7. Shall establish written standards and procedures regarding the confidentiality and security of information disclosed by the commissioner to other agencies or entities, whether such disclosure is by means of an interdepartmental service agreement, contract or otherwise, and may suspend or decline to initiate the disclosure of such information if, in the commissioner's judgment, any such agency or entity has not fully complied with all such standards and procedures or is unable to so comply.

SECTION 3. Section 1 of chapter 62 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding after the number "72," in line 13 of paragraph (c), the following:- 223,.

SECTION 4. Section 1 of chapter 62 of the General Laws, as so appearing, is hereby amended by striking out paragraph (c) and inserting in place thereof the following:-

(c) "Code", the Internal Revenue Code of the United States as amended and in effect for the taxable year, unless otherwise provided.

SECTION 5. Subsection (B)(a)(11) of section 3 of chapter 62 of the General Laws, as so appearing, is hereby amended by adding at the end thereof the following:-

Provided however, that the deduction shall be limited in the manner provided in section 222(d)(3) of the Code as amended and in effect for the taxable year.

SECTION 6. Subsection 3(B)(a) of section 3 of chapter 62 of the General Laws, as so appearing, is hereby amended by adding a new subparagraph as follows:-

(14) Such amount as is described in section 1341(a)(2) of the Code, to the extent, if any, that such amount (i) was previously included in Massachusetts taxable income and (ii) is not otherwise deductible under section 2(d)(1) of this chapter.

SECTION 7. Section 5A of chapter 62 of the General Laws is hereby amended by adding after subsection (c) the following subsection:-

(d) For purposes of this section, the ownership of an interest in real property located in the commonwealth shall include the ownership of an interest in a partnership, to the extent that the partnership holds an interest in real property located in the commonwealth. The commissioner shall promulgate regulations determining when an interest in real property located in the commonwealth may be disregarded as de minimis.

SECTION 8. Section 5 of Chapter 62B of the General Laws, as appearing in the 2002 Official Edition, is hereby further amended by adding after the word "partnership," in line 22, the following:- or limited liability company.

SECTION 9. Section 12 of chapter 62C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out subsection (a) and inserting in place thereof the following:-

(a) Every financial institution, as defined in section 1 of chapter 63, shall, on or before the fifteenth day of the third month following the close of each taxable year, make a return to the commissioner giving such information as the commissioner may deem necessary for the determination of the tax imposed by section 2 of chapter 63.

If any financial institution shall have participated in filing a consolidated return of income to the federal government, it shall file with the commissioner a statement of net income showing its gross income and deductions in accordance with the law and regulations governing the usual federal returns of corporations not so participating.

SECTION 10. Chapter 62C of the General Laws, as so appearing, is hereby amended by inserting after section 21 the following section:-

Section 21A. The unauthorized willful inspection of any information contained in or set forth in any return or document filed with the commissioner, or of any information which can identify a particular taxpayer that is received by the commissioner for the purposes of tax administration from the Internal Revenue Service or any other taxing authority or derived from any other source, by (1) any employee of the commonwealth or any city or town therein, including the commissioner or any deputy, assistant, clerk, or assessor; (2) any employee of another state; (3) any person under contract with the commonwealth or any officer, director, or employee thereof; or (4) any person obtaining unauthorized access to any return, document, or information while such return, document, or information, including any return, document, or information stored in computer systems or computer files, is in the custody of the commissioner or of any other person or entity described in clauses (1) through (3) above; is prohibited.

Any violation of this subsection shall be punished by a fine of not more than \$1,000 per return, document, or taxpayer, as the court determines, with respect to which information was

inspected, or by imprisonment for not more than one year, or both, and by disqualification from holding office in the commonwealth for such period, not exceeding 3 years, as the court determines.

The determination by the commissioner that an employee of the department of revenue, or the determination by another agency head that an employee of such other agency has, in contravention of this subsection, willfully inspected information where such inspection was unauthorized and not protected by the good faith provision of this subsection, shall be grounds for dismissal of such employee.

A violation, as determined by the commissioner, of this subsection by any officer, director or employee of any person under contract with the commonwealth shall be grounds for prohibiting such officer, director or employee from working on such contract. A violation, as determined by the commissioner, of this subsection by any person under contract with the commonwealth, or any officer, director, or employee thereof, shall also be cause for terminating any current contract between the commonwealth and for prohibiting such contractor from entering into any future contract with the commonwealth.

SECTION 11. Section 24 of chapter 62C of the General Laws, as appearing in the 2002 Official Edition is hereby amended by striking the first paragraph and replacing it with the following new paragraph:-

For the purposes of verifying any return filed under this chapter, the commissioner or his duly authorized representative may examine the books, papers, records and other data of the taxpayer, which shall be open to such person for verification. In the case of a return due (taking extensions into account) before July 1, 2002, such examination may be required at any time within three years after such date prescribed for the filing of the return, or the date filed, whichever is later. In the case of a return due (taking extensions into account) on or after July 1, 2002, such examination may be required at any time within six years after such date prescribed for the filing of the return, or the date filed, whichever is later.

SECTION 12. Section 24 of chapter 62C of the General Laws, as so appearing, is hereby further amended by inserting at the end of the first paragraph the following sentence:-

The taxpayer shall provide to the commissioner all accounting records and information in electronic format, as requested by the commissioner, to the extent that the taxpayer maintains such records in electronic format.

SECTION 13. Chapter 62C of the General Laws is hereby amended by inserting after section 35 thereof the following sections:-

Section 35A. (a) If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies. For purposes of this section, the term "underpayment" means the amount by which any tax exceeds the amount shown as the tax by the taxpayer on the return.

(b) This section shall apply to the portion of any underpayment which is attributable to one or more of the following: (1) negligence or disregard of the tax laws of the commonwealth or of public written statements issued by the commissioner; (2) any substantial understatement of liability for a tax referred to in section 2 of chapter 62C .

(c) For purposes of this section, the term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of laws or public written statements, the term "disregard" includes any careless, reckless, or intentional disregard, and there is a substantial understatement of liability for a tax for any tax period if the amount of the understatement for such period exceeds the greater of 10 percent of the tax required to be shown on the return for the period or \$1,000.

(d) For purposes of paragraph (c), the term "understatement" means the excess of the amount of the tax required to be shown on the return for the period over the amount of the tax which is shown on the return. The amount of the understatement shall be reduced by that portion of the understatement which is attributable to (i) the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment; or (ii) any item if the

relevant facts affecting the tax treatment of the item are adequately disclosed in the return or in a statement attached to the return, and there is a reasonable basis for the tax treatment of such item by the taxpayer, provided, however, that this subparagraph (ii) shall not apply in the case of listed abusive transactions or strategies within the meaning of paragraph (b) of section 35B of this chapter.

(e) The penalty set forth in this section shall apply only in cases where a return of tax is filed.

Section 35B. (a) No penalty shall be imposed under section 35A of this chapter with respect to any portion of an underpayment if it is shown that there was reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion. With respect to listed abusive transactions or strategies within the meaning of paragraph (b) hereof, the commissioner may, by regulation, set forth circumstances under which such penalties otherwise may be waived in the interest of the efficient administration of the tax laws of the commonwealth.

(b) The commissioner may, from time to time, list by regulation items that he considers to be abusive transactions or tax strategies for purposes of section 35A of this chapter and of this section.

Section 35C. (a) If (i) any part of any understatement of liability with respect to any return or claim for abatement or refund is due to a position for which there was not a realistic possibility of being sustained on its merits; (ii) any person who is a return preparer with respect to such return or claim knew or reasonably should have known of such position; and (iii) such position was not disclosed as provided in paragraph (d) of section 35A of this chapter or was frivolous; such person shall pay a penalty of \$1,000 with respect to such return or claim unless it is shown that there is reasonable cause for the understatement and such person acted in good faith. The penalty imposed under this paragraph may be assessed within three years after the return or claim was filed. Any claim for abatement of the penalty shall be filed within three years from the time the penalty was paid. The commissioner may waive or abate the penalty

imposed under this subsection if the taxpayer demonstrates that its failure to comply was due to reasonable cause and not willful neglect.

(b) If any part of any understatement of liability with respect to any return or claim for refund is due to (i) a willful attempt in any manner to understate the liability for tax by a person who is a return preparer with respect to such return or claim, or (ii) any careless, reckless or intentional disregard by any such person of the tax laws of the commonwealth or of public written statements issued by the commissioner; such person shall pay a penalty equal to the greater of \$1,000 or 10 percent of the tax attributable to such part of the understatement; provided, however, that if both the penalty imposed under paragraph (a) hereof and the penalty imposed under this paragraph are applicable to the same return or claim, the penalty imposed under this paragraph shall be reduced by the amount of the penalty imposed under paragraph (a). The penalty imposed under this paragraph may be assessed against the preparer at any time. Any claim for abatement of the penalty shall be filed within two years from the time the assessment was made.

(c) Except as otherwise provided in this section, the penalties imposed under this section shall be administered in accordance with the rules set forth in this chapter for the administration of taxes generally.

Section 35D. (a) Any taxpayer subject to the tax imposed under chapter 62 or an excise imposed under chapter 63 that takes an inconsistent position in reporting its income subject to tax under such chapters shall disclose the inconsistency when it files its return.

(b) For purposes of this section, a taxpayer is deemed to have taken an "inconsistent position" when (i) the governing law in another state in which the taxpayer files a return is the same in all material respects as the law in the commonwealth; and (ii) if the taxpayer had interpreted the law of the commonwealth as it interpreted the law of the other state in filing its return in such state, the taxable income attributed to the commonwealth would have been greater.

(c) Any taxpayer that fails to disclose an inconsistency as required under paragraph (a) shall pay a penalty equal to the amount of tax attributable to the inconsistency, which penalty shall be in addition to all other penalties that may apply. The commissioner may waive or abate such penalty if the inconsistency or the failure to disclose was attributable to reasonable cause and not willful neglect.

SECTION 14. Chapter 62C of the General Laws is hereby further amended by inserting after section 35D thereof, as added by section 41 of this act, the following section:-

Section 35E. (a) If any person (i) organizes or assists in the organization of any plan or arrangement or the sale of any plan or arrangement, and (ii) makes or furnishes, or causes another person to make or furnish, a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit, including but not limited to the avoidance of a filing requirement with respect to a tax return that would otherwise be required to be filed under this chapter, which the person knows or has reason to know is false, fraudulent or deliberately misleading as to any material matter, such person shall pay, with respect to each taxpayer to whom such statement is made, a penalty equal to \$5000, or, if the person establishes that it is lesser, 100 percent of the gross income derived or to be derived from the activity described in this paragraph. The penalty imposed under this paragraph may be assessed against such person within six years after the statement was made. Any claim for abatement of the penalty shall be filed within two years from the time the assessment was made.

(b) Except as otherwise provided in this section, the penalties imposed under this section shall be administered in accordance with the rules set forth in this chapter for the administration of taxes generally.

SECTION 15. Section 49A of Chapter 62C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out subsections (a) -(b) and replacing them with the following:-

(a) Any person applying to any department, board, commission, division, authority, district or other agency of the commonwealth or any subdivision of the commonwealth, including a city, town or district, for a right or license to conduct a profession, trade or business or for the renewal of such right or license, shall certify upon application, under penalties of perjury, that he has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

(b) Upon receipt of the application, and once the commissioner has promulgated applicable regulations and implemented to his satisfaction the manner and method, including electronic data matching, by which verification may be obtained, the department or other entity charged with issuing the right or license shall confirm that the applicant is in good standing with respect to any and all returns due and taxes payable to the commissioner as of the date of issuance of the confirmation. An applicant shall be deemed to have consented to the commissioner's release of tax and child support data to such department or other entity to the extent necessary to confirm the applicant's adherence to the tax and child support laws of the commonwealth. No such right or license shall be issued or renewed unless the issuer has confirmed the tax or child support status of the applicant as required herein; provided, however that the commissioner may issue waivers of the requirements of this paragraph for reasonable cause, and that the existence of a non-frivolous appeal of a tax or child support assessment, or of a payment agreement with which the taxpayer is fully compliant shall not prevent issuance of the license.

No contract or other agreement for the purposes of providing goods, services or real estate space to any of the foregoing agencies shall be entered into, renewed or extended with any person unless such person certifies in writing, under penalties of perjury, that he has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support and, subject to the conditions stated above, the contracting agency confirms with the commissioner that the person is in good

standing with respect to any and all returns due and taxes payable to the commissioner as of the date of confirmation.

SECTION 16. Subsection (a) of section 50 of chapter 62C, as so appearing, is hereby amended by adding after the first sentence thereof, the following:-

Such lien shall also extend to property or rights to property of a trust with respect to tax amounts due from a grantor or other person treated as the owner of any portion of such trust by reason of sections 671-678 of the Code, and to property or rights to property of a disregarded entity as defined in section 1 of chapter 62 with regard to tax amounts due from the owner of such entity.

SECTION 17. Section 4 of chapter 62E of the General Laws, is hereby amended by striking out subsection (a), and inserting in place thereof, the following:-

(a). An institution, as defined in subsection (b) of this section, must, within 30 days of the end of the first quarter of every calendar year, submit to the commissioner a report of the name, record address, social security number and other identifying data, as the commissioner may require, of each person maintaining an account at such institution. Within thirty days of the end of each subsequent quarter of every calendar year, every institution shall submit to the commissioner a supplemental report regarding each new account opened by a person during such quarter and each account reported in a prior quarter that has been closed during the most recent quarter. All information shall be in a form satisfactory to the commissioner.

SECTION 18. Section 4 of said chapter 62E is hereby amended by striking out subsections (b) through (d), inclusive.

SECTION 19. Section 4 of chapter 62E, as most recently amended by sections 32 and 33 of chapter 262 of the Acts of 2004 is hereby further amended by re-designating subsections (e) and (f) as subsections (b) and (c) respectively.

SECTION 20. Subsection 1 of Section 30 of Chapter 63 of the General Laws, as most recently amended by section 2 of chapter 127 of the Acts of 2003, is hereby further amended by

striking the phrase “nor to a corporation exempt from taxation under section 501 of the Code, as amended and in effect for the taxable year”

SECTION 21. Subsection 2 of Section 30 of Chapter 63 of the General Laws, as most recently amended by section 2 of chapter 127 of the Acts of 2003, is hereby further amended by striking the phrase “to a corporation, association or organization which is exempt from taxation under section 501 of the Code, as amended and in effect for the taxable year”

SECTION 22. Subsection 4 of Section 30 of Chapter 63 of the General Laws, as appearing in the 2002 Official Edition, is further amended by inserting, in line 72, immediately after the phrase "not be allowed.", the following sentence:- In the case of a corporation exempt from taxation under the provisions of section 501 of the Code, "net income" means unrelated business taxable income, as defined in section 512 of the Code.

SECTION 23. Subsection (a) of section 31A of chapter 63 of the General Laws, as so appearing is hereby amended by striking out, in line 17, the parenthetical "(1)" and is further amended, by striking out in lines 18-20 inclusive, the words ", or (2) is considered recovery property under section one hundred and sixty-eight of said Code".

SECTION 24. Subsection (i) of section 31A of chapter 63 of the General laws, as so appearing, is hereby amended, in line 155, the parenthetical "(1)" and is further amended by striking out, in lines 156-158 inclusive, the words ", or (2) is considered recovery property under section one hundred and sixty-eight of said Code".

SECTION 25. Section 38 of chapter 63 of the General Laws, as amended, is hereby further amended by striking out subparagraph (f) and inserting in place thereof, the following:-

(f) The sales factor is a fraction, the numerator of which is the total sales of the corporation in this commonwealth during the taxable year, and the denominator of which is the total sales of the corporation everywhere during the taxable year. As used in this subsection, unless specifically stated otherwise, "sales" means all gross receipts of the corporation (including deemed receipts from transactions treated as sales or exchanges under the Code) except interest, dividends, and gross receipts from the maturity, redemption, sale, exchange or

other disposition of securities, provided, however, that "sales" shall not include gross receipts from transactions or activities to the extent that a non-domiciliary state would be prohibited from taxing the income from such transactions or activities under the Constitution of the United States. Sales of tangible personal property are in this commonwealth if:

1. the property is delivered or shipped to a purchaser within this commonwealth regardless of the f. o. b. point or other conditions of the sale; or

2. the corporation is not taxable in the state of the purchaser and the property was not sold by an agent or agencies chiefly situated at, connected with or sent out from premises for the transaction of business owned or rented by the corporation outside this commonwealth. "Purchaser", as used in clauses 1 and 2 of this paragraph, shall include the United States government.

Sales, other than sales of tangible personal property, are in this commonwealth if:

1. the income-producing activity is performed in this commonwealth; or

2. the income-producing activity is performed both in and outside this commonwealth and a greater proportion of this income-producing activity is performed in this commonwealth than in any other state, based on costs of performance.

For the purposes of this subsection: (1) in the case of the licensing of intangible property, the income-producing activity will be deemed to be performed in the commonwealth to the extent that the intangible property is used in the commonwealth; (2) the corporation will be deemed to be taxable in the state of the purchaser if the tangible personal property is delivered or shipped to a purchaser in a foreign country; (3) sales of tangible personal property to the United States government or any agency or instrumentality thereof for purposes of resale to a foreign government or any agency or instrumentality thereof are not sales made in the commonwealth; (4) sales by a corporation to its wholly owned DISC shall be treated as though made directly by such corporation to the customer of such DISC; (5) in the case of the sale, exchange or other disposition of a capital asset, as defined in section 1(m) of chapter 62, used in a taxpayer's trade or business, including a deemed sale or exchange of such asset, "sales"

are measured by the gain from such transaction; and (6) "security" means any interest or instrument commonly treated as a security as well as other instruments which are customarily sold in the open market or on a recognized exchange, including, but not limited to, transferable shares of a beneficial interest in any corporation or other entity, bonds, debentures, notes, and other evidences of indebtedness, accounts receivable and notes receivable, cash and cash equivalents including foreign currencies, and repurchase and futures contracts.

Notwithstanding the foregoing, mutual fund sales by a mutual fund service corporation as defined in subsection (m), other than the sale of tangible personal property, shall be assigned to this commonwealth to the extent that shareholders of the regulated investment company are domiciled in this commonwealth as follows:

(a) by multiplying the mutual fund service corporation's total dollar amount of sales of such services on behalf of each regulated investment company by a fraction, the numerator of which shall be the average of the number of shares owned by the regulated investment company's shareholders domiciled in this commonwealth at the beginning of and at the end of the regulated investment company's taxable year that ends with or within the mutual fund service corporation's taxable year, and the denominator of which shall be the average of the number of shares owned by the regulated investment company shareholders everywhere at the beginning of and at the end of the regulated investment company's taxable year that ends with or within the mutual fund service corporation's taxable year.

(b) A separate computation shall be made to determine the sale for each regulated investment company, the sum of which shall equal the total sales assigned to the commonwealth.

The commissioner shall promulgate regulations to implement the provisions of this paragraph.

SECTION 26. Section 38C of Chapter 63 of the General Laws is hereby amended by adding the following new paragraph at the end thereof:-

For purposes of this section and section 38, the development and sale of standardized computer software shall be considered a manufacturing activity, without regard to the manner of delivery of the software to the customer.

SECTION 27. Chapter 63 of the General Laws is hereby amended by inserting after section 38S, the following section:-

Section 38T. Every foreign or domestic corporation which is exempt from taxation under section five hundred and one of the Code shall be subject to tax under section 32 or 39 on its unrelated business taxable income, as defined in section five hundred and twelve of the Code. The property or net worth of such a corporation shall not be subject to tax under this chapter and the minimum excise under section 32 or 39 shall not apply. If a corporation has unrelated business taxable income that is taxable both within and without the commonwealth, it may apportion its net income to the commonwealth pursuant to section 38, provided that its apportionment factors shall be determined by reference only to the unrelated business activity of the corporation. The credits allowed under this chapter shall be determined only with respect to the unrelated business activity of the corporation.

An entity that is exempt from taxation under section five hundred and one of the Code shall not be considered to be a foreign or domestic corporation for purposes of chapter 59.

SECTION 28. Section 42B of Chapter 63 of the General Laws is hereby amended by adding the following new paragraph at the end thereof:-

For purposes of this section and section 38, the development and sale of standardized computer software shall be considered a manufacturing activity, without regard to the manner of delivery of the software to the customer.

SECTION 29. Chapter 64G of the General Laws, as appearing in 2002 Official Edition, is hereby further amended by striking Section 7B thereof and inserting in place thereof the following section:-

Section 7B. Every operator who fails to pay to the commissioner any sums required to be paid by this chapter shall be personally and individually liable therefor to the commonwealth. The term "operator", as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership or a limited liability company, who as such officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

SECTION 30. The definition of "tangible personal property" in Section 1 of chapter 64H of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking the word "also" in the last sentence thereof and by adding the following at the end:- Any transfer of standardized computer software, including but not limited to electronic, telephonic, or similar transfer, shall also be deemed a transfer of tangible personal property. The commissioner may, by regulation, provide rules for apportioning tax in those instances in which software is transferred for use in more than one state.

SECTION 31. Section 1 of chapter 64H of the General Laws, as appearing in the 2002 Official Edition, is hereby further amended in line 198 by striking the word "and" and by inserting the following at the end of line 200:- and (vii) a "service charge" or "tip" that is distributed by a vendor to service employees, wait staff employees or service bartenders as provided in section 152A of chapter 149.

SECTION 32. Subsection (q) of section 6 of chapter 64H, as appearing in the 2002 Official Edition, is hereby amended by striking out subsection (1) and inserting in its place the following:-

(1) sales of both returnable and nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

SECTION 33. Subsection (qq) of Section 6 of Chapter 64H of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the first sentence and inserting in its place the following sentence:

(qq) Sales of gas, steam, electricity or heating fuel for use by any business that has five or fewer employees that had gross income of less than \$1,000,000 for the preceding calendar year, and that reasonably expects gross income of less than \$1,000,000 for the current calendar year.

SECTION 34. Chapter 64H of the General Laws, as appearing in the 2002 Official Edition, is hereby further amended by striking section 16 thereof and inserting in place thereof the following section:-

Section 16. Every person who fails to pay to the commissioner any sums required by this chapter shall be personally and individually liable therefor to the commonwealth. The term "person", as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership or limited liability company, who as such officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

SECTION 35. Section 17 of chapter 64I, as appearing in the 2002 Official Edition, is hereby amended by striking the section and by replacing it with the following:-

Section 17. Every person who fails to pay to the commissioner any sums required by this chapter shall be personally and individually liable therefor to the commonwealth. The term "person", as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership or limited liability company, who as such officer, employee or member is under a duty to pay over the taxes imposed by this chapter. No person shall be personally or individually liable for uncollected use tax due from a corporation, partnership, or limited liability company on its purchases of tangible personal property purchased for use of the corporation, partnership or limited liability company unless the person's failure to pay the tax was willful or unless the person made personal use of the property subject to tax.

SECTION 36. Section 17 of Chapter 64I of the General Laws, as so amended is hereby further amended by striking the last sentence thereof and inserting in its place the following:-

Section 17. The term "person", as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership or limited liability company, who as such officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

SECTION 37. Chapter 93 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out section 52A, as so appearing, and inserting in place thereof the following section:-

Section 52A. The IV-D agency, as set forth in chapter 119A, shall report periodically to consumer reporting agencies the name of any noncustodial parent who is delinquent in the payment of child support, and the amount of overdue support owed by such parent, subject to the requirements of the following paragraph. The IV-D agency shall report information only to an entity that has furnished satisfactory evidence that the entity is a consumer reporting agency.

Prior to reporting the name of any person who is delinquent in the payment of child support to a consumer reporting agency, the IV-D agency shall afford such person notice and due process pursuant to sections 6 and 17 of chapter 119A. Nothing in this section shall impair the rights of any obligor under federal or state law regarding consumer credit reports or consumer credit reporting agencies.

SECTION 38. Section 23 of chapter 119 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the words "the Social Security Act", in line 181, the following:- The department shall be subrogated to the rights of each such child and shall obtain and provide to the IV-D agency information that may be reasonably necessary to enforce the department's right.

SECTION 39. Said section 23 of said chapter 119, as so appearing, is hereby further amended by striking out, in lines 186 and 187, the words "for whom support is collected", and inserting in place thereof the following words:- whose rights to support are subrogated.

SECTION 40. Section 2 of chapter 119A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the period, in line 27, the following sentence:- In enforcing such subrogation rights, the IV-D agency may proceed to establish a support order pursuant to section 32F of chapter 209, or to establish paternity or a support order pursuant to chapter 209C, notwithstanding the failure of the obligee whose rights to support have been subrogated to the commonwealth to attend a hearing in an action pursuant to said chapters, upon a showing that written notice of the hearing was provided to the obligee by first class mail to the most recent residential address that the obligee has provided to the department of transitional assistance, the department of social services or the division of medical assistance.

SECTION 41. Section 3 of said chapter 119A of the General Laws, as so appearing, is hereby amended by striking out, in line 15, the words "rule 4(d)(2) of the Massachusetts Rules of Domestic Relations Procedure", and inserting in place thereof the following:- section 4.

SECTION 42. Section 3B of said chapter 119A of the General Laws, as so appearing, is hereby amended by inserting after the words "subsection (a)", in line 69, the following words:- , the notice pursuant to subsection (b) shall specify the threshold for modification and shall identify the sources of the financial information relating to the parties, including tax information pursuant to chapter 62C and wage reporting information pursuant to chapter 62E that serves as the basis for the calculation of the amount of support in the proposed stipulation.

SECTION 43. Said section 3B of said chapter 119A, as so appearing, is hereby further amended by striking out subsection (f).

SECTION 44. Said section 4 of said chapter 119A, as so appearing, is hereby further amended by inserting after the words "written notice", in line 52, the following words:- by first class mail.

SECTION 45. Section 4 of chapter 119A of the General Laws, as so appearing, is hereby amended by inserting, after the words "child support enforcement", in line 48, the following words:- or modification.

SECTION 46. Section 6 of chapter 119A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in each of lines 119 and 121, the word, "six", and inserting in place thereof the following:- 10.

SECTION 47. Section 6 of chapter 119A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting before the word "attachment", in line 16, the following words:- seeking a warrant pursuant to section 34A of chapter 215 in appropriate situations.

SECTION 48. Section 10 of chapter 200A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after subsection (h) the following subsection:-

(i) Prior to disbursement of a payment in excess of \$500, the treasurer shall review information made available by the IV-D agency, as set forth in chapter 119A, and by the department of revenue to ascertain whether the claimant owes past due child support to the commonwealth or to an individual to whom the IV-D agency is providing services, and to ascertain whether the claimant owes any past due tax liability to the commonwealth. If the claimant owes past due child support or a past due tax liability, the treasurer shall notify the IV-D agency or the department of revenue, respectively, of the claimant's name, address and social security number. The treasurer shall first disburse to the IV-D agency the full amount of the payment or such portion of the payment that satisfies the claimant's past due child support obligation and, if funds remain available after that disbursement, the treasurer shall disburse to the department of revenue the full amount of the payment or such portion of the payment that satisfies the claimant's past due tax liability. The treasurer shall disburse to the claimant only that portion of the payment, if any, remaining after the claimant's past due child support obligation, past due tax liability, and any other valid liens have been satisfied.

SECTION 49. Section 32F of chapter 209 of the General Laws, as so appearing, is hereby amended by inserting at the end of subsection (a) the following sentences:- In an action pursuant to this section where the rights to support of a party have been subrogated to the commonwealth pursuant to chapters 18, 119, or 118E, or Title IV, Parts A or E, or Title XIX

of the Social Security Act, or any other public assistance program as required by federal or state law, the court shall proceed to establish an order for support pursuant to this section, notwithstanding the failure of such party to attend a hearing, upon a showing that written notice of the hearing was provided to the party by first class mail to the most recent residential address that the party has provided to the department of transitional assistance, the department of social services or the division of medical assistance. For good cause shown, the court may set aside an entry of default and, if an order or judgment has been entered, may likewise set aside such order or judgment in accordance with rule 60(b) of the rules of domestic relations procedure.

SECTION 50. Section 4 of chapter 209C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the first two sentences and inserting in place thereof the following:- Actions under this chapter to establish paternity, support, custody or visitation of a child shall be filed in the judicial district or county in which the child and one of the parents lives and if neither of the parents lives in the same judicial district or county as the child then the complaint shall be filed in the judicial district or county where the child lives; provided that if the parents have been parties to a prior action under this chapter and such action has not been dismissed, a subsequent action under this chapter may be filed in the judicial district or county where the earlier action was filed.

SECTION 51. Section 16 of chapter 209C of the General Laws, as so appearing, is hereby amended by inserting after subsection (g) the following subsections:-

(h) In an action pursuant to this chapter where the rights to support of a party have been subrogated to the commonwealth pursuant to chapters 18, 119, or 118E, or Title IV, Parts A or E, or Title XIX of the Social Security Act, or any other public assistance program as required by federal or state law, the court shall proceed to establish orders pursuant to this chapter, notwithstanding the failure of such party to attend a hearing, upon a showing that written notice of the hearing was provided to the party by first class mail to the most recent residential address that the party has provided to the department of transitional assistance, the department

of social services or the division of medical assistance. For good cause shown, the court may set aside an entry of default and, if an order or judgment has been entered, may likewise set aside such order or judgment in accordance with rule 60(b) of the rules of domestic relations procedure.

(i) In an action pursuant to this chapter in a case receiving IV-D services, the court shall, upon good cause shown and upon verification of identity satisfactory to the court, permit a party to testify in an action pursuant to this chapter by telephone; and upon a showing that a party is incarcerated, permit such party to submit testimony by affidavit.

SECTION 52. Section 23 of chapter 209C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting, after the words "null and void", in line 4, the following words:- , except as to any support arrearage which is owed to the Commonwealth as reimbursement for public assistance and which accrued prior to the date that the parents intermarry.

SECTION 53. Section 34A of chapter 215 of the General Laws, as so appearing, is hereby amended by designating such section as subsection (a).

SECTION 54. Said section 34A of said chapter 215, as so appearing, is hereby further amended by adding at the end the following new subsection:-

(b) Upon the request of the IV-D agency as set forth in chapter 119A, when a total arrearage amounting to the support owing for a 6-month period has accrued under the defendant's most recent order or judgment for support and the IV-D agency has been unable to bring the defendant before the court on a capias, the court shall issue a warrant for the arrest of the defendant. The IV-D agency shall file an affidavit accompanying the request for a warrant that states (1) a total arrearage amounting to the support owing for a 6-month period has accrued under the defendant's most recent order or judgment for support, (2) the amount of the total arrearage, (3) the date of the last payment, if any, and (4) a description of the efforts made to serve the capias on the defendant. The IV-D agency shall also provide the court with identifying information on the defendant's name, last known address, date of birth, gender,

race, height, weight, hair and eye color, any known aliases and any such information as shall be required for a warrant to be accepted by the criminal justice information system maintained by the criminal history systems board. A warrant that contains the above identifying information as provided by the IV-D agency to the court shall not be nullified if the information is later found to be inaccurate. If any of the above identifying information is not known to the IV-D agency, the IV-D agency may apply to the court for an exemption from the requirement to provide such information. The court shall grant the exemption if the court deems that the unknown information is not essential to identifying the defendant. The defendant may not challenge the validity of a warrant based on the granting of such exemption. The court shall enter the warrant, including the identifying information provided by the IV-D agency to the court and the name of the court that issued the warrant, into the warrant management system as set forth in section 23A of chapter 276. The warrant shall consist of the information that appears in the warrant management system, and a printout of the warrant from the criminal justice information system shall constitute a true copy of the warrant. The entry of the warrant into the warrant management system and the criminal justice information system shall constitute notice and delivery of the warrant to all law enforcement agencies who have arresting authority pursuant to section 23 of chapter 276.

Upon arrest, the arresting authority shall arrange for transportation of the defendant to the court that issued the warrant. If the defendant is arrested when the court is not in session, the defendant shall be held by the arresting authority or county jail facility, and transported to the issuing court during the next session and presented to the court. If the defendant voluntarily submits his person to the court, he shall likewise be brought before the court. The court shall notify the IV-D agency and conduct a hearing to recall the warrant and shall issue an order for the defendant to do one or more of the actions set forth in clauses (1) to (6) of section 34 of this chapter.

Whenever a warrant is recalled or removed, the court shall, without unnecessary delay, enter the recall or removal in the warrant management system which entry shall be

electronically transmitted to the criminal justice information system. The court shall also provide to the defendant a notice of recall of warrant.

No law enforcement officer who in the performance of his duties relies in good faith on the warrant appearing in the warrant management system shall be liable in any criminal prosecution or civil action alleging false arrest, false imprisonment, or malicious prosecution or arrest by false pretense.

The issuing court shall provide notice no later than 30 days after the issuance of the warrant to the defendant. Such notice shall contain information on the name and address of the issuing court, the date of the last payment of child support, if any, the amount of the total child support arrearage, a description of the method by which the defendant may clear the warrant and a summary of the consequences the defendant may face for not responding to the warrant. Such notice shall be deemed satisfactory if mailed to the address stated on the warrant.

If a warrant remains outstanding for 1 year following the date that the warrant is entered into the warrant management system it shall constitute evidence of willful nonsupport in a criminal action pursuant to chapter 273.

SECTION 55. Chapter 258 of the General Laws is hereby amended by inserting after section 13 the following section:-

Section 14. For the purpose of satisfying liens for past due child support, securing repayment of public assistance benefits, and past taxes, a public employer shall comply with the provisions of sections 24D, 24E, and 24F of chapter 175 and any regulations promulgated thereunder in the same manner as if it were a company authorized to issue policies of insurance pursuant to said chapter 175.

SECTION 56. Section 15A of chapter 273 of the General Laws, as so appearing, is hereby amended by inserting after the words "both of them", in line 5, the following word:- or.

SECTION 57. Section 23 of chapter 276 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting, after the word "crime", in the first sentence,

the following words:- and child support warrants issued pursuant to section 34A of chapter 215.

SECTION 58. Except as otherwise provided in sections 59 through 64 the provisions of this act shall be effective upon passage.

SECTION 59. Sections 20, 21, 22 and 27 of this act shall apply to taxable years beginning on or after January 1, 2006.

SECTION 60. Sections 3, 4, 5, 6, 7, 25, 26, and 28 of this act shall apply to taxable years beginning on or after January 1, 2005.

SECTION 61. Sections 17-19 inclusive of this act shall be effective the first day of the fourth month following the date of passage.

SECTION 62. Section 13 of this Act shall apply to returns filed on or after the date of passage.

SECTION 63. Section 14 of this act shall apply to statements made on or after the date of passage.

SECTION 64. Sections 48 and 55 shall be effective six months after the date of passage.